

November 25, 2014

Submitted via FOIA portal

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: FOIA request for records relating to the Environmental Protection Agency's Registration of ZonaStat-H, which contains porcine zona pellucida.

Dear Freedom of Information Officer:

On behalf of Friends of Animals ("FoA"), I hereby request pursuant to the Freedom of Information Act ("FOIA") all records considered by the Environmental Protection Agency ("EPA") in registering ZonaStat-H, which contains porcine zona pellucida. I also request a full waiver of all search and duplication fees.

EPA published notice of its receipt of an application to register ZonaStat-H in the *Federal Register* at 75 Fed. Reg. 4384 (Jan. 27, 2010). *File Symbol*: 86833-R. *Docket Number*: EPA-HQ-OPP-2009-0800. The applicant was the Humane Society of the United States.

Please provide all records in your possession, whether received, created, and/or distributed by EPA, that the agency considered in registering ZonaStat-H. This request includes the application and any documents, writings, materials, correspondence, emails, files, photos, maps or reports generated, received and/or issued by EPA pursuant or relating to this agency action. This request also includes any records received, created, and/or distributed by EPA prior to receipt of the Humane Society's application as well as any records received, created, and/or distributed by EPA up to the date it received this FOIA request.

In the event that access to any of the requested records is denied, please note that FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. FoA therefore requests that we be provided with all non-exempt portions, which are reasonably segregable. We further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken. A written justification might also help to avoid unnecessary litigation. FoA has the right to appeal the withholding or deletion of any information and expects that you will list the office and address where such an appeal can be sent.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S.164, 173 (1991). Congress affirmed these tenets of FOIA in legislation, stating that government remains accessible to the American people and is always based not upon the "need to know" but upon the fundamental "right to know." Public Law 110-175, 121Stat2524, 2525 (Dec. 31, 2007). President Obama has also directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

FoA anticipates that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

Fee Waiver Request

FOIA provides that, "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The legislative history of FOIA, as well as case law interpreting FOIA, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

FoA's current request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived.

This request satisfies both statutory and regulatory requirements for granting a fee waiver. Below we first state in italics the requirements for a fee waiver delineated in the FOIA regulations of the Department of Interior (43 C.F.R. § 2.48) and then state our satisfaction of those requirements.

A. Disclosure of the Information Requested is in the Public Interest

(1) How the records concern the operations or activities of the Federal government.

The requested records concern EPA's processing of applications for and registration of new pesticide products. Specifically, it concerns the government's activities, management, and oversight of the pesticide registration.

(2) How disclosure is likely to contribute to public understanding of those operations or activities, including:

(i) How the contents of the records are meaningfully informative;

These documents will illuminate in a clear and direct way the extent and details of EPA's registration of PZP. As such, their release will significantly contribute to public understanding and oversight of EPA's operations, specifically registration of PZP.

(ii) The logical connection between the content of the records and the operations or activities;

There is a logical connection between the content of the records FoA requests and the government's operations and activities because the content of the records will demonstrate how EPA processes applications for new pesticide registration. The content of the records will also reveal information about PZP.

(iii) How disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding;

FoA is a nonprofit, international animal advocacy organization incorporated in the state of New York since 1957. FoA seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living and domestic animals. FoA has a proven track record of contributing to public understanding of issues surrounding wild animals, particularly wild horses. PZP is administered as a contraceptive to wild horses.

FoA informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called Act'ionLine, its website, and other reports. FoA regularly publicizes the plight of wild horses on public lands, and has published articles and information advocating for the protection of wild horses so that they can live unfettered in their natural habitat.

(iv) Your identity, vocation, qualifications, and expertise regarding the requested information and information that explains how you plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding

FoA has on staff or available for consultation biologists, environmental lawyers, and policy analysts with long-term experience in animal health, conservation issues, and data analysis. Once the requested information is obtained, FoA staff will analyze the data presented and will review and digest the documents. Then, FoA staff will disseminate the information to FoA's members, members of other conservation organizations, and other interested members of the public. FoA plans to use its website, its magazine, and its connection to other news media in order to significantly contribute to the public understanding of how the government operates in the registration of PZP.

(v) Your ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject (for example, how and to whom do you

intend to disseminate the information)

FoA employs several experts who are able to quickly digest and circulate information obtained from this request, including attorneys and media correspondents. FoA plans to disseminate the information to FoA's members, members of other conservation organizations, and other interested members of the public through its website, its quarterly journal ActionLine, and through outreach to other media outlets.

(3) How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding, including:

(i) Whether the information being requested is new;

FoA's request is for new information regarding the operations and activities of the wild horse adoption program. FoA believes the information requested has not been released to the public yet, and is not aware of how it could access this information other than through a FOIA request. Thus, the requested documents would reveal new information about the wild horse adoption program.

(ii) Whether the information would confirm or clarify data that has been released previously;

To the best of our knowledge, EPA has not released documents containing detailed information about the registration of PZP. FoA anticipates that the requested information will clarify the impact of PZP on wild horses, other wildlife, and the environment.

(iii) How disclosure will increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure; and

FoA requests the records to increase its understanding, and subsequently contribute to public understanding, of how EPA registered PZP. Disclosure of these documents would provide FoA and the public, with information about PZP. Without this information, FoA and the public cannot determine how PZP is affecting animals and the environment. Disclosure will permit FoA to disseminate information to the public and it will also ensure members of FoA and the public are more informed about PZP.

(iv) Whether the information is already publicly available. If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a particular issue, it is less likely that there will be a significant contribution from release.

The information FoA is requesting is not, to our knowledge, publicly available. The Government may omit sending us requested records that are available in publicly accessible forums such as on the internet or in published materials that are routinely available at public or university libraries so long as the Government provides us with adequate references and/or website links so that we may obtain these materials on our

own. We would request the Government provide us with an index of such omitted documents. However, we suspect that the majority of requested materials will not be available unless we receive them from the Government in satisfaction of this FOIA request.

(4) How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.

The government approved the use of PZP, and uses PZP as a contraceptive to limit the population of wild horses and burros on public lands. However, the public does not have all the information about PZP or know its full effect on the environment. FoA members, and the public, are very interested in PZP, its effect on the environment, and how EPA processed the application to register it as a pesticide. FoA's staff has the ability to review, consolidate, and disseminate all this information to the public. This process will make the information available to the public. By consolidating and releasing the information, FoA will enhance the public's understanding of how the government is currently operating and registering pesticides. If the information is not disclosed to FoA, the public will remain in the dark about PZP.

B. Disclosure of the information is not primarily in the commercial interest of the requester

(b) In deciding whether the fee waiver meets the requirements in § 2.45(a)(2) of this subpart, the bureau will consider any commercial interest of yours that would be furthered by the requested disclosure.

(1) You are encouraged to provide explanatory information regarding this consideration.

(2) The bureau will not find that disclosing the requested information will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure.

FoA does not have a commercial, trade, or profit interest in the requested records. In fact, FoA does not have any commercial, trade, or profit interests. FoA is a not-for-profit, international animal advocacy organization, incorporated in the state of New York since 1957. It serves the public interest by increasing the general public awareness of animal advocacy issues and how to end animal cruelty and exploitation around the world. FoA seeks to promote a respectful view of non-human, free-living and domestic animals. The Internal Revenue Service recognizes FoA as a 501(c)(3) tax-exempt organization (IRS Employer Identification #: 13-6018549).

Given FoA's well-orchestrated and demonstrably successful efforts at educating the public on animal advocacy issues, and the fact that FoA's education program has significantly contributed to an understanding of government operations and activities, FoA is entitled to a fee waiver.

Please produce the records regarding this FOIA request by electronic mail to jenniferbarnes@friendsofanimals.org or the physical address listed below:

Friends of Animals
7500 E. Arapahoe Rd., Suite 385
Centennial, CO 80112

Please produce the records on a rolling basis; at no point should the search for – or the deliberation concerning – certain records delay the production of others that EPA has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or jenniferbarnes@friendsofanimals.org. I look forward to hearing from you within twenty days (excepting Saturdays, Sundays, and public holidays), as required by FOIA.¹

Sincerely,



Jennifer Barnes
Staff Attorney
Wildlife Law Program
Friends of Animals

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¹ By law, EPA may not assess any search fees if it fails to meet FOIA's mandatory time limits for responses. In 2007, Congress amended FOIA to provide that "[a]n agency shall not assess search fees . . . if the agency fails to comply with any time limit" of FOIA. 5 U.S.C. § 552(a)(4)(A)(viii). An agency is required to make a determination on a FOIA request, including a fee waiver request, within 20 working days of receiving the request. 5 U.S.C. § 552(a)(6)(A)(i). It is likewise required to rule on an appeal of any denial within 20 working days of receiving such an appeal. 5 U.S.C. § 552(a)(6)(A)(ii). *See Bensman v. Nat'l Park Serv.*, 806 F. Supp. 2d 31 (D.D.C. 2011).